IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18057 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYKUMAR NAGINPRASAD YADAV - Petitioner(s)
Versus
UNION OF INDIA & 1 - Respondent(s)

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Appearance :
PS GOGIA for Petitioner(s) : 1,
None for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 07/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. The petitioner was initially appointed as casual labourer on 1-4-1985. In the past, within a period of two years or so, his services were terminated on 4-7-1987 by an oral order of termination against which he filed O.A. no.517/1987 before the Central Administrative Tribunal (for short “the Tribunal”). It was allowed on 15-2-1991. Accordingly, he was taken back in service. Thereafter, within a short time i.e. 3-9-1992 at 10 O'clock when he was serving in telephone exchange at Khirasara, Ghed, village one Doctor came and lodged the complaint regarding his telephone. Thereupon, the petitioner went to the Doctors place and first abused him and came with sticks and also gave threat to kill. Thereafter, with a view to falsely involve the Doctor, he set the machinery of telephone exchange on fire and lodged the complaint against the Doctor. However, Doctor had filed complaint against him for the offences under Sections 436, 323, 504, 506(2), 211 of the Indian Penal Code and Sections 3 and 7 of the Prevention of Damage to Property Act. The petitioner was casual labourer, therefore, by an order dated 17-10-1992 his services were terminated by giving one month's notice

pay. This was challenged by the petitioner before the learned Tribunal by way of O.A no.223/1993 which was dismissed by the learned Tribunal on 26-3-2001. This impugned judgment and order passed by the learned Tribunal Annexure 'A' is challenged by the petitioner in this petition which is filed under Articles 226 and 227 of the Constitution.

2. Learned Counsel Shri Gogia for the petitioner raised following contentions in this matter:

(i) The impugned order of termination passed by the disciplinary authority as well as the order passed by the learned Tribunal dismissing his application are bad in law and illegal. He submitted that before passing an order of termination, the petitioner was not extended an opportunity of hearing and without holding departmental inquiry his services were terminated. Thus, therefore, the impugned order of termination is in gross violation of

principles of natural justice, therefore, liable to be quashed and set aside.

(ii) Bare look at the order of termination it is clear that stigma is cast against the petitioner by passing the impugned order. Such an order of termination could not have been passed without affording an opportunity of hearing.

(iii) The petitioner was a casual labourer, and therefore, without following the provisions of Section 25F of the Industrial Disputes Act his services could not have been terminated.

(iv) After the impugned order of termination and the impugned order of the Tribunal dismissing his application, the petitioner came to be acquitted by the competent court by judgment and order dated 3rd February, 2003 (Annexure 'B'). Therefore also, the impugned order of termination is

required to be quashed and set aside.

3. What is challenged in this petition by the petitioner is the impugned judgment and order dated 26th March, 2001 passed by the learned Tribunal in O.A. no.223/1993 and the impugned order of termination dated 17-10-1992 passed by the respondent no.2. Admittedly, the petitioner has moved this Court in the month of May, 2006 by way of this petition after his O.A. no.223/1993 was dismissed by the impugned judgment and order dated 26-3-2001 passed by the learned Tribunal. Thus, therefore, there is a gross delay of more than five years on the part of the petitioner in approaching this Court. This itself is a ground for dismissing the petition on the ground of gross delay and laches without going into the merits of the case. However, an explanation is tried to be offered by the petitioner for gross delay of five years by submitting that Criminal Case no.66/1993 was pending before the Fast Track Court Judge, Junagadh, and the judgment and order of acquittal was passed only on 3-2-2003 by the learned Fast Track Court Judge. Thereafter, he had made

verbal representation to the respondent to consider his case and also he approached the Advocate for further action in the case because some delay in filing the present petition has been caused. This is nothing but an eye-wash. The petitioner ought not to have waited for the order of the Criminal Court. As soon as the learned Tribunal dismissed his O.A. on 26-3-2001, he should have approached this Court within a reasonable period. Assuming for the sake of argument that he was waiting for the final outcome of the criminal case, then also, the Criminal Court rendered its decision way back on 3-2-2003. Thereafter also, the petitioner waited for a period of more than three years for approaching this Court by way of this petition. For this period, a lame excuse is tried to be offered by the petitioner that he made oral representation, to whom we do not know. No details are given as to when such oral representation was made and before which authority. Similarly, no details are given by the petitioner as to when he approached his Advocate for further action in the case. It is true that substantial justice is required to be done and not a technical

one as held by the Honourable Supreme Court in a catena of its decisions. However, the Supreme Court has also held that if there is gross delay in approaching the High Court in its writ jurisdiction and the delay is not properly explained, then the High Court may exercise its discretion against the petitioner. Thus, therefore, without going into the merits of the case, this petition is required to be dismissed straight away on the ground of gross delay and laches.

4. Even if the petition was filed within time, then also, this Court would not have interfered with the impugned judgment and order passed by the learned Tribunal in this case.

5. We will take the last submission of Mr. Gogia first. His submission was that the petitioner was acquitted by the competent criminal Court in a criminal case filed against him, therefore, the impugned order of termination be quashed and set aside. He also submitted that it was not open to the department to terminate his services by holding

regular inquiry after the order of acquittal was passed by the competent Court. This later part of the submission of Mr. Gogia is required to be straight away rejected in view of the latest judgment of the Division Bench of this Court in the case of **State of Gujarat and Ors. vs. Dattu Rsghu Vansari reported in 2006(2) G.L.H. 731.**

5.1 The petitioner has produced on record the judgment and order of acquittal dated 3-2-2003 passed by the learned Additional Sessions Judge and 6th Fast Frack Court, Junagadh, in Sessions Case no.66/1993. From the bare reading of the judgment, it is clear that it was not an honourable acquittal. In fact, it is unfortunate that the criminal court took almost ten years in deciding the Sessions Case and because of the delay in disposal of the Sessions Case, all the witnesses in this case have turned hostile and not supported the prosoecution case on the main issue of setting the telephone exchange on fire by the petitioner himself. However, at least some of the witnesses have deposed before the Court that the petitioner-accused had gone to the Doctor and beat him with stick. It has also come in evidence that the

accused got excited and gave filthy abuses to the Doctor whereupon the Doctor told him that he will have to file a complaint against him. Because of that the accused started beating the Doctor and after the incident, he went back to his office, and thereafter, telephone exchange was set on fire. It is a different thing that the accused had compromised with the complaint-Doctor for the offences under Sections 323 and 504 of the Indian Penal Code, and therefore, he was acquitted. Thus, the judgment and order of acquittal itself suggests that the petitioner was at fault. Thus, therefore, merely because the Criminal Court has not found him guilty for the reasons stated in its order, is no ground to quash and set aside the termination order.

6. The first contention of Mr. Gogia was that without holding regular inquiry, the services of the petitioner were terminated by violating the principles of natural justice. Reliance was placed on the Division Bench judgment of this Court in the case of **Gujarat State Road Transport Corporation and Anr. v. Chandulal G. Rasadiya reported in 1993(2) G.L.H.**

204. It was the case of a Badli Worker whose name was simply removed from the waiting list on the ground of his alleged misconduct. On facts of the case, the Division Bench of this Court held that without departmental inquiry, his name could not have been removed from the list. We fail to appreciate as to how this judgment of the Division Bench of this Court would help the petitioner in this case. We have already stated in brief few relevant facts of the case. The petitioner was a casual labourer. Earlier, in 1987 his services were terminated but he was reinstated in service in view of the order passed by the learned Tribunal. Thereafter, within a period of less than one year, again he committed serious misconduct and not only set the telephone exchange on fire but also tried to falsely involve the complainant-Doctor in the case and during the criminal trial, he won over the witnesses and ultimately forced the Doctor to compromise for the offences under Sections 323 and 504 of the Indian Penal Code. Thus, therefore, there is no question of breach of Section 25F of the Industrial Disputes Act which is clear from the order of termination which is

produced for the first time during the course of arguments which is ordered to be taken on record.

7. Before parting with, it must be stated that the impugned order of termination passed in 1992 is not directly challenged before this Court in this writ petition under Article 226 of the Constitution. Before approaching this Court, the petitioner had approached the learned Tribunal by way of O.A no.223/1993. The learned Tribunal after giving cogent reasons dismissed his application on all counts including the violation of Section 25F of the Industrial Disputes Act. Thus, therefore, though this petition is labelled as a petition both under Articles 226 and 227 of the Constitution, strictly speaking, this is a petition under Article 227 of the Constitution, the scope of which is very narrow and limited as held by the Honourable Supreme Court in number of decisions. In case of **Mohd.Yunus v. Mohd Mustaqim and others reported in AIR 1984 SC 38,** the Honourable Supreme Court has held that even if error is committed either on facts or law by the Tribunal, the High Court cannot interfere with the order of the

Tribunal and correct the mistake in limited supervisory jurisdiction under Article 227 of the Constitution. Unless jurisdictional error is committed, this Court cannot interfere. In view of the binding decisions of the Honourable Supreme Court, we are of the considered opinion that no interference is called for. In fact, while dismissing the application of the petitioner, the learned Tribunal has neither committed any mistake on facts nor of law, much less, jurisdictional error.

8. In view of the above discussion, this petition fails and is hereby summarily dismissed.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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